

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
ILLINOIS COMMERCE )  
COMMISSION ON ITS OWN ) No. No. 01-0706  
MOTION, )  
 )  
vs. )  
 )  
NORTH SHORE GAS COMPANY )  
 )  
Reconciliation of )  
revenues collected under )  
gas adjustment charges )  
with actual costs )  
prudently incurred. )

Chicago, Illinois  
April 22, 2005

Met pursuant to notice at 10:07 a.m.

BEFORE :

MS. CLAUDIA SAINOT, Administrative Law Judge

APPEARANCES:

MR. SEAN BRADY and  
MR. JAMES E. WEGING  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff;

1 APPEARANCES: (CONT'D)

2 McGUIREWOODS, LLP, by  
3 MS. MARY KLYASHEFF and  
4 MR. THOMAS R. MULROY  
5 77 West Wacker Drive  
6 Suite 4100  
7 Chicago, Illinois 60601  
8 Appearing for North Shore Gas Company;

9 MR. MARK KAMINSKI  
10 100 West Randolph Street, 11th Floor  
11 Chicago, Illinois 60601  
12 Appearing for the People of the State of  
13 Illinois;

14 MS. JULIE L. SODERNA  
15 208 South LaSalle Street, Suite 1760  
16 Chicago, Illinois 60604  
17 Appearing for CUB.

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28 SULLIVAN REPORTING COMPANY, by  
29 Caryl L. Hardy, CSR, RPR

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1	I N D E X					
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
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1	E X H I B I T S		
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1 JUDGE SAINSOT: By the authority vested in  
2 me by the Illinois Commerce Commission, I now call  
3 docket 01-0706. It is the Illinois Commerce  
4 Commission on its own motion versus North Shore Gas  
5 Company and is a reconciliation of revenues with  
6 prudent adjustment charges.

7 Well, it is my understanding that the  
8 Staff is going to go out of order?

9 MR. BRADY: Appearances?

10 JUDGE SAINSOT: Okay. Let's do  
11 appearances. Thank you.

12 MS. KLYASHEFF: Appearing for North Shore  
13 Gas Company, Thomas Mulroy and Mary Klyasheff with  
14 McGuirewoods, 77 West Wacker, Chicago, Illinois,  
15 60601.

16 MR. KAMINSKI: Mark Kaminski of the  
17 Illinois Attorney General's office, 100 West  
18 Randolph Street, Chicago, Illinois, 60601,  
19 appearing on behalf of the People of the State of  
20 Illinois.

21 MS. SODERNA: Julie Soderna appearing on  
22 behalf of the Citizens Utility Board, 208 South

1 LaSalle, Suite 1760, Chicago, Illinois, 60604.

2 MR. BRADY: Appearing on behalf of the  
3 Staff of the Illinois Commerce Commission, Sean R.  
4 Brady and James E. Weging, 160 North LaSalle  
5 Street, Suite C-800, Chicago, Illinois, 60601.

6 JUDGE SAINSOT: Okay. It is my  
7 understanding Staff witnesses are going to be  
8 called out of order; is that correct?

9 MR. BRADY: Yes, your Honor.

10 JUDGE SAINSOT: Okay.

11 MR. BRADY: Your Honor, Staff calls  
12 Dr. David Rearden.

13 Mr. Rearden, will you please introduce  
14 yourself for the record and spell your last name?

15 JUDGE SAINSOT: Why don't we swear him in  
16 first?

17 MR. BRADY: Yes.

18 (The witness was duly sworn.)

19

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22

1 DR. DAVID REARDEN,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. BRADY:

7 Q. Will you please introduce yourself for the  
8 record and spell your last name?

9 A. My name is David Rearden.

10 Q. And will you spell your last name?

11 A. R-e-a-r-d-e-n.

12 Q. Mr. Rearden, who do you work for?

13 A. I'm an economist in the policy program of  
14 the energy division of the Illinois Commerce  
15 Commission.

16 Q. Did you prepare testimony for this case?

17 A. Yes.

18 Q. How many pieces of testimony did you  
19 prepare?

20 A. Three.

21 Q. What were the names of those testimonies?

22 A. I have direct testimony. I've got a filed

1 revised additional direct and rebuttal testimony  
2 and rebuttal testimony.

3 Q. And there are redacted and unredacted  
4 versions of all three of those documents?

5 A. Yes.

6 Q. And attached to all three of those  
7 documents are appendices explaining your  
8 calculation methodologies?

9 A. Yes.

10 Q. And referring to your direct testimony,  
11 that's identified as Staff Exhibit 3.0?

12 A. Yes.

13 Q. You have Staff Exhibits 3.01 through 3.04  
14 that you're sponsoring?

15 A. Yes.

16 Q. And your revised additional direct and  
17 rebuttal testimony is identified as ICC Staff  
18 Exhibit 7.0; is that correct?

19 A. Yes.

20 Q. And attached to that are Exhibits 7.01  
21 through 7.05?

22 A. Yes.



1           Q.     And there are no attachments to your  
2     Exhibit 11; is that correct?

3           A.     Yes.

4           Q.     Was this testimony prepared by you or  
5     under your direction?

6           A.     Yes.

7           Q.     If I were to ask the questions that are  
8     contained in these documents today, would your  
9     answers be the same?

10          A.     Yes.

11          Q.     And to your knowledge, all these documents  
12     have been prefiled on e-docket?

13          A.     Yes.

14                 MR. BRADY:   Your Honor, at this time we  
15     move that ICC Staff Exhibit 3.0, both the redacted  
16     and unredacted versions; Staff Exhibit 7.0, the  
17     redacted and unredacted versions; and ICC staff  
18     Exhibit 11.0, redacted and unredacted versions, be  
19     moved into the record.

20                 JUDGE SAINSOT:   Any objection?

21                 MS. KLYASHEFF:   No.

22                 JUDGE SAINSOT:   That being the case,

1 Mr. Brady, your motion is granted. And the ICC  
2 Staff Exhibit 3.00, which is Dr. Rearden's direct  
3 testimony; Staff Exhibit 7.00, which is  
4 Dr. Rearden's revised additional direct testimony;  
5 and ICC Exhibit 11.00, which is Dr. Rearden's  
6 rebuttal testimony, all three documents, redacted  
7 and unredacted, are admitted into evidence.

8 MR. BRADY: Thank you, your Honor.

9 At this time we have no questions for  
10 Dr. Rearden and we tender him for  
11 cross-examination.

12 MS. KLYASHEFF: The company has cross for  
13 Dr. Rearden. However, the questions would be  
14 substantially the same as several questions that  
15 Peoples Gas asked Dr. Rearden in Docket 01-0707.  
16 We would request, once the transcript is available  
17 in that other docket, that administrative notice be  
18 taken of the relevant portion of the transcript in  
19 this docket. And if that is acceptable to the  
20 parties and to your Honor, we would not have any  
21 questions at this time.

22 JUDGE SAINSOT: Any objection?

1                   MR. BRADY: Staff has no objection with  
2     that.

3                   JUDGE SAINSOT: Ms. Klyasheff, your motion  
4     is granted. Just furnish me with a copy of the  
5     transcripts from Dr. Rearden's testimony in the  
6     0707 case so physically I can put them in the file  
7     here.

8                   MS. KLYASHEFF: We will do that.

9                   JUDGE SAINSOT: Thank you.

10                  So anyone else?

11                  MR. BRADY: I believe we have Steve  
12     Knepler from the Staff. Correct, Steve?

13                  JUDGE SAINSOT: The AG has no questions of  
14     Dr. Rearden?

15                  MR. KAMINSKI: No, we do not.

16                  JUDGE SAINSOT: And I take it the CUB  
17     doesn't have any.

18                  MR. KAMINSKI: I guess not.

19                  MR. BRADY: I apologize. You may have  
20     questions for Dr. Rearden.

21                  JUDGE SAINSOT: I don't have any  
22     questions.

1                   Okay. I think you can go. Thank you very  
2 much, Dr. Rearden.

3                   MR. BRADY: Your Honor, the next witness  
4 Staff will call is Mr. Steve Knepler.

5                   (The witness was duly sworn.)

6                   STEVEN KNEPLER,  
7 called as a witness herein, having been first duly  
8 sworn, was examined and testified as follows:

9                   DIRECT EXAMINATION

10                  BY

11                  MR. BRADY:

12                 Q. Mr. Knepler, will you please introduce  
13 yourself and spell your last name for the record?

14                 A. My name is Steven R. Knepler,  
15 K-n-e-p-l-e-r.

16                 Q. Mr. Knepler, for whom do you work?

17                 A. I work as a supervisor in the accounting  
18 department of the Illinois Commerce Commission.

19                 Q. Did you prepare testimony in this case?

20                 A. Yes. I prepared three sets of testimony  
21 in this docket.

22                 Q. Were they direct testimony, additional

1 direct and rebuttal testimony, and rebuttal  
2 testimony?

3 A. Yes, they were.

4 Q. Do you have the direct testimony in front  
5 of you?

6 A. Yes, I do.

7 Q. And is that identified as ICC Staff  
8 Exhibit 1.0?

9 A. That's correct.

10 Q. And attached to that are schedules 1.01  
11 through 1.05?

12 A. That's correct.

13 Q. Do you have your additional direct and  
14 rebuttal testimony?

15 A. Yes, I do.

16 Q. Is that identified as ICC Staff  
17 Exhibit 5.0?

18 A. That's correct.

19 Q. And does that contain schedules 5.01  
20 through 5.05?

21 A. It does.

22 Q. And do you have your rebuttal testimony

1       there?

2           A.     Yes, I do.

3           Q.     And is that identified as ICC Staff  
4       Exhibit 9.0?

5           A.     That is correct.

6           Q.     And there are no schedules attached to  
7       that?

8           A.     No schedules.  It consists of six pages of  
9       questions and answers.

10          Q.     The testimony itself contains six pages of  
11       questions and answers; is that what you're saying?

12          A.     That's correct.

13          Q.     Thank you.

14                 With respect to all three of these  
15       documents, all the documents you've listed here,  
16       were these prepared by you?

17          A.     They were.

18          Q.     If I were to ask you the questions  
19       contained in these documents, would your answers be  
20       the same?

21          A.     They would.

22          Q.     Do you have any corrections to any of

1       these documents?

2           A.     No, I do not.

3           Q.     And to your knowledge, have these  
4       documents been prefiled on e-docket?

5           A.     Yes, they were.

6                   MR. BRADY:   Your Honor, at this time we  
7       move that Mr. Knepler's testimony that's been  
8       identified as ICC Staff Exhibit 1.0 with schedules  
9       1.01 through 1.05, ICC Staff Exhibit 5.0 with  
10      schedules 5.01 through 5.05, as well as Staff  
11      Exhibit 9.0 would be admitted into the record.

12                   JUDGE SAINSOT:   Any objection?

13                   MS. KLYASHEFF:   No.

14                   JUDGE SAINSOT:   Okay.   That being the  
15      case, Mr. Brady, your motion is granted and Staff  
16      Exhibit 1.00, 5.00, and 9.00, which are the direct  
17      testimony of Mr. Knepler, the additional direct  
18      testimony of Mr. Knepler, and the rebuttal  
19      testimony of Mr. Knepler, respectfully are all  
20      admitted into evidence.

21                   MR. BRADY:   Thank you, your Honor.   We  
22      have no questions for Mr. Knepler at this time, and

1 we tender him for cross-examination.

2 JUDGE SAINSOT: Any cross?

3 MS. KLYASHEFF: The company has no cross  
4 for Mr. Knepler.

5 JUDGE SAINSOT: I take it the AG has no  
6 questions.

7 MR. KAMINSKI: We have no cross.

8 JUDGE SAINSOT: Okay. It looks like  
9 you're free to go, Mr. Knepler. Thank you.

10 THE WITNESS: Thank you.

11 JUDGE SAINSOT: Who's next?

12 MS. KLYASHEFF: The company calls David  
13 Wear.

14 (The witness was duly sworn.)

15 DAVID WEAR,  
16 called as a witness herein, having been first duly  
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MS. KLYASHEFF:

21 Q. Please state your name and business  
22 address for the record.



1           A.     David Wear, 130 West Randolph Drive,  
2     Chicago, Illinois, 60601.

3                     (Respondent's Exhibits B, C, D, H, I,  
4                     and 2-10 marked for identification,  
5                     4-22-05.)

6     BY MS. KLYASHEFF:

7           Q.     You have before you a document entitled  
8     Direct Testimony of David Wear and marked for  
9     identification as Respondent's Exhibit B.

10                    You also have before you a document  
11     entitled Additional Direct Testimony of David Wear  
12     and marked for identification as Respondent's  
13     Exhibit C. Included with that testimony were  
14     documents identified as Respondent's Exhibits 2  
15     through 8.

16                    You have before you another document  
17     entitled Rebuttal Testimony of David Wear and  
18     marked for identification as Respondent's  
19     Exhibit D. Included with that testimony were two  
20     documents identified as Respondent's Exhibits 9 and  
21     10; a document entitled Additional Rebuttal  
22     Testimony of David Wear marked for identification

1 as Respondent's Exhibit H; and finally, a document  
2 entitled surrebuttal testimony of David Wear marked  
3 for identification as Respondent's  
4 Exhibit I.

5 Do these documents include the testimony  
6 that you wish to give in this proceeding?

7 A. Yes, they do.

8 Q. Do you have any changes or corrections to  
9 any of these documents?

10 A. No.

11 Q. If I were to ask you the questions  
12 included in your testimony, would your answers be  
13 the same as set forth in these documents?

14 A. Yes, they would.

15 Q. Are the documents identified as Exhibits 2  
16 through 10 the documents to which you refer by  
17 reference to those exhibit numbers in your  
18 testimony?

19 A. Yes.

20 Q. And were those exhibits prepared by you or  
21 under your supervision and direction?

22 A. Yes.

1           Q.     Do you adopt these documents as your sworn  
2 testimony in this proceeding?

3           A.     Yes, I do.

4           MS. KLYASHEFF:   Subject to  
5 cross-examination, we move for the admission of  
6 Respondent's Exhibits B, C, D, H, and I and  
7 Exhibits 2 through 10.

8           MR. KAMINSKI:   No objection.

9           MR. BRADY:   Staff has no objection.

10          JUDGE SAINSOT:   Okay.   That being the  
11 case, your motion is granted, Ms. Klyasheff, and  
12 Peoples Gas Light and Coke Company Exhibits B, C,  
13 D, H, and I, which are the direct; the additional  
14 direct, the rebuttal; the additional rebuttal and  
15 the surrebuttal of David Wear are all admitted into  
16 evidence, as well as Respondent's Exhibits 2  
17 through 10 which are attached to Mr. Wear's  
18 additional direct and his rebuttal.

19          MS. KLYASHEFF:   Just a clarification, I  
20 think you said Peoples Gas and these are North  
21 Shore exhibits.

22          JUDGE SAINSOT:   Thank you very much.

1 North Shore Gas. Thank you.

2 MS. KLYASHEFF: The company has no  
3 additional questions for Mr. Wear and he's  
4 available for cross.

5 MR. KAMINSKI: Your Honor?

6 JUDGE SAINSOT: Sure.

7 MR. KAMINSKI: Thank you.

8 CROSS-EXAMINATION

9 BY

10 MR. KAMINSKI:

11 Q. Good morning, Mr. Wear. Mark Kaminski  
12 with the Attorney General's Office.

13 A. Good morning.

14 Q. Could you turn to your additional direct  
15 that's Exhibit C, page 6?

16 A. Okay.

17 Q. On line 120, you state that you use basis  
18 to describe the difference in gas prices on the  
19 location in the field area and gas prices at the  
20 Chicago city gate, correct?

21 A. Yes, I do.

22 Q. Would you define field area as you use it

1       there?

2           A.     The field area as I use in it that  
3       testimony would refer to various production  
4       locations throughout the U.S. where the company  
5       would routinely purchase natural gas supplies or at  
6       least where natural gas supplies are routinely  
7       traded.

8           Q.     So you would include in that definition  
9       not only places where the production of gas --  
10      actually pulled out of the ground, but also hubs  
11      where it was traded?

12          A.     That's correct.

13          Q.     Okay. Referring to page 8 of your  
14      additional direct, you refer to Exhibits 2 and 3.

15          A.     Yes.

16          Q.     Specific to Exhibit 3 -- and you can flip  
17      to that part -- that attachment to your testimony.  
18      Would you agree that Exhibit 3 contains two sets of  
19      charts and that the first set of charts shows the  
20      yearly basis differential from 1995 to 1999  
21      estimating and estimating the yearly basis for 2000  
22      and 2001?

1           A.     Yes.

2           Q.     And that each chart is different -- I'm  
3     sorry. Each chart is for a different delivery  
4     point?

5           A.     Yes.

6           Q.     And that the source of each of those three  
7     charts is listed as CERA?

8           A.     Yes.

9           Q.     And CERA stands for?

10          A.     Cambridge Energy Research Associates, I  
11     believe.

12          Q.     Okay. The second set of charts is eight  
13     charts showing a monthly basis differential from  
14     October '99 projected through October 2004,  
15     correct?

16          A.     That's correct.

17          Q.     And each of these charts is for a  
18     different delivery point, correct?

19          A.     Yes.

20          Q.     And for each of these eight charts, the  
21     source is listed as Peoples' Energy?

22          A.     Yes.

1           Q.     Could you now turn to page 6 of your  
2     rebuttal testimony? I believe that's Exhibit D or  
3     B.

4           A.     Okay.

5           Q.     If you look on line 105, you state in  
6     response to staff witness Rearden that if initial  
7     basis differentials were low and/or the yearly  
8     declines in these differentials proved to be large  
9     enough, then purchasing gas at the city gate at a  
10    city gate index would lead to lower gas costs,  
11    correct?

12          A.     Yes.

13          Q.     When you refer to the possibility of  
14    initial basis differentials being low and/or the  
15    yearly declines in these differential proving to be  
16    large enough, are you referring to the charts in  
17    Exhibit 3?

18          A.     Just by way of example, but not  
19    specifically to those in any other fashion.

20          Q.     So you are stating that the charts that  
21    are provided in Exhibit 3 are essentially an  
22    example or proof of an example of the initial basis

1       differentials being low and the yearly declines  
2       being proved large enough?

3           A.     No.   I'm sorry for the confusion.   I  
4       believe the charts in Exhibit 3 are merely examples  
5       of basis differentials being shown in decline.   I  
6       make no inference to their starting point or the  
7       rate of decline being rapid or not.

8           Q.     Okay.   Could you please move back to  
9       page 8 of your additional direct?

10                  Are you there?

11           A.     Yes.

12           Q.     On line 164 you claim that the data in the  
13       attached exhibits there, referring to 2 and 3 --  
14       indicate a projected decline in basis differentials  
15       slightly greater than one cent per MMBtu per year?

16           A.     Yes.

17           Q.     And referring to lines 165, 166 of that  
18       same page, you state that this one-cent MMBtu per  
19       year value is obtained by determining the average  
20       slope of the linear regression shown in Exhibit 3,  
21       correct?

22           A.     I believe the testimony that I just



1 admitted into evidence states this value is  
2 obtained by determining the average slope of the  
3 lines spotted on the charts in Exhibit 3.

4 Q. Okay. Could you go to your rebuttal  
5 testimony, please, page 9?

6 A. Yes.

7 Q. On line 193, I believe this statement I'm  
8 going to read wraps around to the next page. You  
9 state that the only significant changes in the GPAA  
10 versus historical purchasing practices were the  
11 process of arriving at the GPAA and desire of the  
12 company to protect its transportation assets from  
13 the damaging effects of a potential dramatic  
14 decline in basis, correct?

15 A. Yes.

16 Q. Does this potential dramatic decline in  
17 basis refer to the projected decline basis  
18 differentials slightly greater than one cent per  
19 MMBtu per year that you discussed in your  
20 additional direct?

21 A. No. That would be a reference to basis  
22 declines that were, in my words, more dramatic than

1 the ones per year that I identified in my exhibits.

2 Q. Could you please now turn to page 23 of  
3 your rebuttal testimony?

4 A. I'm sorry. Which page?

5 Q. Twenty-three.

6 A. Okay.

7 Q. Specifically on lines 496 and 97, you  
8 refer to the real potential for significant decline  
9 in basis, correct?

10 A. Yes.

11 Q. Are the charts on Exhibit 3 attached to  
12 your additional direct testimony the basis for your  
13 reference to the real potential for significant  
14 decline in basis?

15 A. No.

16 Q. Would you now look at Exhibit 3, please?  
17 Specifically could you look at the chart that is  
18 titled Basis Differential-Mid Continent to Chicago  
19 with the source being Peoples Energy?

20 A. Okay.

21 Q. Now, this chart shows that data from  
22 October 1999 projected through October 2004,

1 correct?

2 A. Yes.

3 Q. And this chart indicates that the basis  
4 differential is mainly seasonal in nature, correct?

5 A. I would agree that the data shows a  
6 seasonal component to the data, yes.

7 Q. And you would agree that the basis is  
8 higher in the months November through March than  
9 the months April through October on this chart?

10 A. Yes.

11 Q. And for this chart, the first data point  
12 is October, correct?

13 A. The first data point; did you say?

14 Q. Yes.

15 A. Yes.

16 Q. And the next five data points in this  
17 chart are at the seasonal peak of November through  
18 March, correct?

19 A. Yes.

20 Q. And the last seven data points of this  
21 chart reflect the seasonal low for the basis  
22 differential, correct?

1           A.     That's correct.

2           Q.     And each of these basis charts attached to  
3     your additional direct that have Peoples Energy as  
4     a source cover the same dates:  October '99 through  
5     October 2004, correct?

6           A.     Yes.

7           Q.     So each of the basis charts attached to  
8     your additional direct which indicate Peoples  
9     Energy as a source start out with five of the six  
10    first data points at the seasonal peak and end with  
11    seven data points at the seasonal low, correct?

12          A.     That's correct.

13          Q.     Now, each of these charts in Exhibit 3  
14    that have Peoples Energy as a source you provide a  
15    trend line, correct?

16          A.     That's correct.

17          Q.     And this trend line is what you base the  
18    slightly greater than one cent per MMBtu per year  
19    number on?

20          A.     Those and the trend lines for the CERA  
21    charts as well.

22          Q.     The other charts in Exhibit 3?

1           A.     Yes.

2           Q.     Those other charts in Exhibit 3 only  
3     address '99 -- I'm sorry -- '95 through 2001 with  
4     2000 and 2001 being estimated amounts, correct?

5           A.     That's correct.

6           Q.     Now, referring back to the second set of  
7     charts, those that go from October '99 to October  
8     2004, would you agree that the choice of the  
9     starting point and ending point of these charts  
10    would influence the observed trend line in these  
11    charts?

12          A.     I think that anytime you use different set  
13    of data in your applying of a line, you will get  
14    different results. I don't know that the starting  
15    and ending points would necessarily have any more  
16    effect than any other points that you would remove.

17          Q.     Could you turn to your additional direct  
18    testimony, page 9?

19          A.     Okay.

20          Q.     On line 175, you state the charts in  
21    Exhibit 3 show that the projected basis  
22    differentials are lowest in April through October

1     when transportation assets are more readily  
2     available for optimization, correct?

3           A.     Yes.

4           Q.     Optimization can only be done when those  
5     transportation assets are not being used to serve  
6     retail customers, correct?

7           A.     I think that's a correct statement, yes.

8           Q.     In other words, data would be that  
9     optimization can only be done when transportation  
10    rights are not otherwise being used by the utility,  
11    correct?

12          A.     I think that you've rephrased it in a way  
13    that keeps the same meaning, yes.

14          Q.     Now, beyond the value that could be  
15    realized from optimization, the transportation  
16    rights are valuable to the utility during the peak  
17    transportation season I'm referring to:  November  
18    through March, correct?

19          A.     I'm sorry.  You're going to have to repeat  
20    that question, please.

21          Q.     Beyond optimization, the transportation  
22    rights of the utility are valuable to that utility

1 during the peak transportation season, correct?

2 A. Beyond the optimization potential, the  
3 transportation rights are valuable to the utility  
4 at all times or could be valuable at all times, not  
5 solely in peak winter period.

6 Q. Well, looking at the charts on Exhibit 3,  
7 specifically those that are Peoples Energy charts,  
8 during the seasonal peak of November through March,  
9 your monthly chart shows that the basis  
10 differentials are much higher than in the rest of  
11 the year, correct?

12 A. Yes. Those I would assume to be  
13 average -- averages for the month; that there would  
14 be variability throughout the month, so there could  
15 be times during the peak period where the value of  
16 that asset is not as high as the average. And  
17 similarly, during summer, there could be times when  
18 the value of those assets could be higher than the  
19 average during the summer.

20 Q. Well, referring to those charts, those  
21 monthly charts in Exhibit 3, project the basis  
22 differentials for some of the seasonal peak months

1 to be double or more than those of the off-peak  
2 months, correct?

3 A. There are times where that's true,  
4 correct. There are times where that's not true,  
5 also.

6 Q. And when the basis differentials were  
7 high, the utility was able to buy gas directly from  
8 the field and transport that gas to the Chicago  
9 city gate using its transportation rights, correct?

10 A. Are you referring to specific activity  
11 that was done by the utility in prior years?

12 Q. I'm talking about the ability that the  
13 utility has in having those transmission rights.  
14 They can use those for the purpose that I just  
15 stated, correct?

16 A. That's true.

17 Q. And if the utility uses transportation  
18 rights to transport gas from the field as opposed  
19 to buying at the city gate, when the base  
20 differentials were high, they would successfully  
21 avoid or bypass those differential costs, correct?

22 A. I don't know which costs you're referring



1 to when you say they would avoid those differential  
2 costs.

3 Q. Well, before you agreed that the seasonal  
4 peak had these higher basis differentials:  
5 November through March. And if the utility were to  
6 use their transportation rights to deliver gas from  
7 the field as opposed to buying city gate gas, then  
8 they would avoid paying the differential that is  
9 shown on that chart, correct?

10 A. No. I don't think that's true. The only  
11 differential that would be significant at that time  
12 would be the delivered cost of purchasing gas in  
13 the field and paying all the variable costs to get  
14 it to the city gate compared with the city gate  
15 price that you could have purchased otherwise. You  
16 don't get the full benefit of the field-to-Chicago  
17 price.

18 Q. So the difference would be -- the basis  
19 differential would be the cost of the  
20 transportation versus the basis differential?

21 A. I believe that's correct, yes. I'm sorry.  
22 The cost of the transportation added to the field

1 price as compared -- I'm sorry. I think you said  
2 it right. The cost of the transportation versus  
3 the basis differential, yes.

4 Q. Now, the utility does not enter into  
5 transportation agreements specifically so that it  
6 can optimize that transport capacity, correct?

7 (Telephone interruption.)

8 JUDGE SAINOT: I think we're going to  
9 have to interrupt this and take care of the phone.  
10 I'm sorry, Mr. Kaminski.

11 (Discussion had off the record.)

12 BY MR. KAMINSKI:

13 Q. The utility does not enter into transport  
14 agreements specifically so that it can optimize  
15 that transport capacity, correct?

16 A. The utility does not enter into a  
17 transportation agreement solely for the purpose of  
18 optimizing that capacity.

19 Q. And the ability to bypass or -- sorry.  
20 Strike that.

21 The ability to bypass the higher winter  
22 Chicago city gate basis to the degree that it

1 exceeds the transportation costs is the reason that  
2 the utility purchases these transportation rights,  
3 correct?

4 A. No. The utility would purchase certain  
5 pieces of transportation for a variety of reasons,  
6 many of which would be operational, not solely as a  
7 means to arrive at a delivered price that's less  
8 than the city gate price.

9 Q. Would you agree that it's one of the  
10 reasons that they enter into transportation  
11 agreements?

12 A. That is a reason why it may, yes.

13 MR. KAMINSKI: That's all I have. Thank  
14 you.

15 MR. BRADY: Staff has some questions.

16 JUDGE SAINSOT: Okay.

17 CROSS-EXAMINATION

18 BY

19 MR. BRADY:

20 Q. Good morning, Mr. Wear. I'm Sean Brady on  
21 behalf of the Staff of the Illinois Commerce  
22 Commission.

1           A.     Good morning.

2           Q.     Do you have your direct testimony in front  
3 of you, page 4? I'm sorry. Your additional  
4 direct.

5           A.     Yes.

6           Q.     On line 73 through 76, do you see it  
7 starts with the GPAA was the result of a lengthy  
8 process? And then it goes on to talk about their  
9 request for qualification.

10                   Do you see that sentence?

11          A.     Yes, I do.

12          Q.     And there it talks about at the time you  
13 were looking to implement -- that Peoples Gas --  
14 I'm sorry -- North Shore was looking to implement a  
15 fixed gas charge. Do you see that?

16          A.     Yes.

17          Q.     And then in the next sentence, it talks  
18 about they were looking for an RFQ for a fixed  
19 price gas supply proposal?

20          A.     Yes.

21          Q.     How did North Shore expect the fixed price  
22 contract to work?

1 MS. KLYASHEFF: May I object to that  
2 question? The question was how did it expect the  
3 contract to work. It's a little bit vague. I know  
4 what you mean, but I'm afraid the answer might not  
5 satisfy your question.

6 MR. BRADY: Okay.

7 BY MR. BRADY:

8 Q. Let's clarify things. At the time the  
9 company got sent out request for qualifications in  
10 December of 1998. Do you recall that?

11 A. Yes.

12 Q. And --

13 A. I'm sorry. Can I --

14 Q. Sure.

15 A. -- reframe that answer?

16 I don't recall the event. I recall  
17 testifying to that event.

18 Q. Then what formed the basis for your  
19 testimony about the event?

20 A. It was through discussions with other  
21 people within the company.

22 Q. Okay. So was it that you were involved

1 with the request for qualification?

2 A. That's correct.

3 Q. Is it your understanding that Mr. Roy  
4 Rodriguez was involved with the request for  
5 qualification?

6 A. I can't know for certain whether he was,  
7 but that makes sense that he might have been  
8 involved in that process, yes.

9 Q. Mr. Wear, a long time ago I'm sure you had  
10 provided a data request response discussing  
11 providing studies and calculations supporting --  
12 well, let me give you a document that's both in  
13 response to DMG 2.115. You were identified as the  
14 responsible witness. And the question was: Does  
15 the company believe its contract with Enron North  
16 America is prudent. If yes, provide studies,  
17 calculations to fully support the response.

18 MR. BRADY: Your Honor, what I'd like to  
19 do is -- I didn't make copies of this entire thing.  
20 I just want to show this to him to refresh his  
21 recollection or see if it refreshes his  
22 recollection as to Mr. Rodriguez's involvement with

1 the --

2 JUDGE SAINCOT: Are you going to show him  
3 that whole big stack of documents?

4 MR. BRADY: I'm showing him this page  
5 right here.

6 JUDGE SAINCOT: Okay. Just that page, not  
7 the whole...

8 MR. MULROY: Are these North Shore data  
9 requests?

10 MR. BRADY: Yes, they are.

11 MR. MULROY: You're refreshing his  
12 recollection?

13 MR. BRADY: Yes, sir.

14 BY MR. BRADY:

15 Q. This is data request response 2.115, and  
16 it has you identified as the responsible witness.  
17 And I guess I asked you do you recall preparing  
18 this or was it prepared under your direction. And  
19 do you see that this first page is the request for  
20 qualification? It is a draft letter, but that was  
21 what was sent to us from -- by you.

22 Do you recall preparing this document --

1       these documents in response?

2           A.     Yes, I do.

3           Q.     On page 1 of 6, do you see where it says:  
4       Instructions for responses to provide them to  
5       Mr. Roy Rodriguez? Do you see that?

6           A.     Yes, I do.

7           Q.     As well as Ms. Judy Pokorny as far as  
8       contacting for questions?

9           A.     Yes.

10          Q.     Does that refresh your recollection as to  
11       Mr. Rodriguez's involvement with the requests for  
12       qualifications?

13          A.     Well, again, I'm not sure if you're asking  
14       me do I recall the activity because, as I already  
15       said, I wasn't directly involved. I recall  
16       Mr. Rodriguez and Mr. -- and Ms. Pokorny assisting  
17       me in the preparation of that data response. And I  
18       do see that their names are listed as the people  
19       who solicited -- that the responses be sent to  
20       them.

21                 So I can infer that Mr. Rodriguez had some  
22       involvement there. I still was not present and



1       witnessed Mr. Rodriguez doing the activity.

2           Q.     You have no reason to doubt that that  
3       document was correct?

4           A.     No.

5           Q.     Thank you.

6                   Since we're on the topic of your role at  
7       the time during the reconciliation period or right  
8       before the reconciliation period at the time the  
9       GPAA was being initiated, it's your understanding  
10      that the GPAA -- when I say GPAA, I refer to the  
11      Gas Purchasing and Agency Agreement. Are you  
12      familiar with that term?

13          A.     Yes.

14          Q.     And is it your understanding that that  
15      contract for North Shore was signed in September of  
16      1999?

17          A.     Yes.

18          Q.     And you had a different position within  
19      the company at that time than the one you have at  
20      this time, correct -- what you do now?

21          A.     I believe at the time I was supervisor of  
22      the same department that I am now currently

1 manager.

2 Q. Which is the gas applied administration?

3 A. Yes.

4 Q. And just to clarify for the record, what  
5 does gas applied administration -- what does that  
6 department do?

7 A. They're responsible for negotiating supply  
8 agreements, transportation agreements, storage  
9 agreements, the operation of those contracts on a  
10 daily basis once they are executed and in use.

11 Q. Thank you.

12 So at the time, who was the manager of the  
13 gas supply administration department? Was that  
14 Mr. DeLara?

15 A. It may have been Mr. DeLara. It may have  
16 been Mr. Compton. I am not sure. There was some  
17 period of time when Mr. DeLara was my manager, and  
18 there was a period of time when he was a director  
19 of the area as well.

20 Q. Director of gas supply?

21 A. Right. And Mr. Compton was the manager  
22 after him.

1 Q. Just --

2 A. At one point in time, Mr. Compton and I  
3 both reported to Mr. DeLara as supervisors and he  
4 as the manager. Subsequent to that, Mr. DeLara  
5 became a director, Mr. Compton became a manager,  
6 and I was a supervisor reporting to Mr. Compton.

7 Q. Thank you.

8 Now, as I understand it -- well, let me  
9 ask, was Mr. Blachut the manager of gas planning at  
10 the time, do you recall?

11 A. I believe that was true, yes.

12 Q. And was Mr. Puracchio, P-u-r-a-c-c-h-i-o,  
13 the manager of gas storage?

14 A. I'm afraid I don't know at what time he  
15 had that job title.

16 Q. Okay. Now, going back to the timeline for  
17 this contract for the GPAA, as I understand it in  
18 your testimony, on page 4, lines 75 and 76 -- this  
19 is your additional direct.

20 A. Lines 74 and 75 of my additional direct?

21 Q. Seventy-five and 76.

22 A. Okay.

1           Q.     Where it says Respondents listed nine  
2     markers to participate in the request for  
3     qualification process...

4           A.     Yes.

5           Q.     And then I believe subsequent -- as I  
6     understand it, subsequent to that, the company,  
7     North Shore -- was it North Shore who chose Enron  
8     North America to enter into negotiations with?

9           A.     For the purpose of the fixed price  
10    proposal, yes.

11          Q.     And were you involved with those  
12    negotiations on behalf of North Shore?

13          A.     No, I wasn't.

14          Q.     But you did perform a role in evaluating  
15    the GPAA, correct?

16          A.     That's correct.

17          Q.     Can you describe what that role was?

18          A.     Yes. My role was - -again, I was  
19    supervisor of the department gas supply  
20    administration at the time, so my role was to  
21    ensure that the contract operated in a fashion that  
22    met the company's needs and met the criteria that

1 we had established for the negotiation process.

2 Q. Were those criteria written down?

3 A. Not --

4 Q. Let me rephrase that.

5 Were those criteria contained in the  
6 request for qualification?

7 A. The request for qualification was for a  
8 fixed price gas proposal. The criteria that I  
9 referred to are ones that we developed subsequent  
10 to that for the purposes of working towards a  
11 market-based supply contract that became the GPAA.

12 Q. So there was a change, and you got away  
13 from looking at a fixed price contract. Did you  
14 issue a new request for qualifications with the  
15 new -- setting forth the new standards and  
16 guidelines for what you were looking for, you being  
17 the company, North Shore?

18 A. No. The company did not.

19 Q. And is it your understanding that the  
20 request for qualification that was sent out was  
21 sent for both Peoples Gas and North Shore?

22 A. Yes.

1           Q.     Just to be clear, you became involved with  
2     the evaluation only after it was decided not to go  
3     forward with a fixed price contract?

4           A.     That's my recollection, yes.

5           Q.     And at the time that it was decided to  
6     move forward with the GPAA, was Enron North America  
7     already identified as the entity that North Shore  
8     was going to move forward with in terms of a  
9     contract?

10                  MR. MULROY:   I'm sorry.   Could I have that  
11     question read back, please?

12                          (Record read.)

13                  MR. MULROY:   Thank you.

14     BY THE WITNESS:

15           A.     North Shore only -- as I recall, only  
16     worked with Enron on a contract like the GPAA.  I  
17     don't think there was ever a decision that -- prior  
18     to executing the GPAA that there had to be a GPAA.  
19     I think it was an evolving process.  I didn't -- I  
20     don't think there was a presupposition that this  
21     was going to be done eventually.

22

1 BY MR. BRADY:

2 Q. I'm sorry. That was my poorly-framed  
3 question. What I was trying to determine was it's  
4 my understanding the request for qualification was  
5 disseminated for a fixed price contract. The  
6 proposals were received. You received a number of  
7 them.

8 At some point there was a decision to --  
9 there were two decisions made: One, the decision  
10 to go with Enron North America, and there was also  
11 a decision to go with something different than a  
12 fixed price contract. I'm trying to determine  
13 which happened first.

14 MR. MULROY: I won't object to that  
15 question, but it has a lot of stuff in it. If you  
16 can answer it, just be clear what you're answering,  
17 Mr. Wear.

18 BY MR. BRADY:

19 Q. The simple question is which happened  
20 first? Did you decide that -- North Shore  
21 decide -- did North Shore choose Enron North  
22 America, or did it decide to go forward with the

1 GPAA?

2 A. Maybe if I could just explain to you my  
3 understanding; and if it doesn't answer your  
4 question, you can ask another.

5 Q. Please.

6 A. My understanding is that North Shore chose  
7 Enron North America as the party with which it  
8 wanted to pursue a fixed price proposal. After the  
9 decision was made by the company to no longer  
10 pursue a fixed price proposal with Enron, the  
11 company decided to continue to pursue other  
12 proposals with Enron that included the GPAA.

13 Q. Great. Thank you. That answered my  
14 question.

15 So then those other proposals were  
16 discussed in the -- I believe you mentioned a  
17 six-month negotiation process leading up to the  
18 GPAA, or maybe you just...

19 A. I don't know where I may have used the  
20 term six months, but that's probably approximately  
21 true.

22 Q. Yes. I'm sorry. I'm relying on what you



1     refer to the spring of 1999, so I think in my mind  
2     I was saying March to September.  There's no  
3     question pending.

4             The decision to go -- North Shore's  
5     decision to go to -- let me start that over.

6             Did North Shore and Peoples Gas choose to  
7     go forward with Enron North America at the same  
8     time?

9             A.    I think those decisions were made, if not  
10    at the same time, fairly -- fairly close proximity  
11    to one another.

12            Q.    So then you were involved in the  
13    negotiations for -- I asked you this question.  I  
14    forgot the answer already, so I'm going to restate  
15    it again.

16            You said that you were involved in the  
17    negotiations for the GPAA?

18            A.    To some degree, yes.

19            Q.    For both Peoples Gas and for North Shore?

20            A.    Yes.

21            Q.    And do you recall, was Mr. Compton  
22    involved with these negotiations?

1           A.     I don't recall his involvement, whether it  
2     was -- whether he was involved or not.

3           Q.     And what about Mr. DeLara since he was  
4     your supervisor?

5           A.     I believe Mr. DeLara was involved in the  
6     negotiations of the GPAA from time to time, not --  
7     I don't believe his involvement was as regular as  
8     mine.

9           Q.     Was there pretty much a core group that  
10    was doing the evaluation for North Shore?

11                   MR. MULROY:   I'm sorry.   Pretty much what?

12   BY MR. BRADY:

13           Q.     Was there a core group of people who were  
14    involved with the negotiations?

15                   MR. MULROY:   Thank you.

16   BY MR. BRADY:

17           Q.     The evaluation and negotiation of the  
18    GPAA.

19           A.     There was a lot of people that had some  
20    involvement with the negotiation process.   Some  
21    people would be involved very infrequently or for  
22    only, you know, very small elements of the

1 contract. Other people had greater levels of  
2 involvement.

3 It was a range of how people -- of how  
4 much time people spent on it. I don't think that I  
5 could draw a line to say this set of people were  
6 the core group and these people were not.

7 Q. Well, was your involvement in the  
8 evaluation and negotiation of the GPAA the same  
9 with North Shore as it was with Peoples Gas?

10 A. I would say that's true, yes.

11 Q. When you were involved in analyzing the  
12 GPAA, did you meet with people from Enron?

13 A. Yes.

14 Q. And did you visit their trading floor?

15 A. I don't recall if I visited their trading  
16 floor during the process of the -- negotiating the  
17 GPAA.

18 Q. So you may have done so at sometime?

19 A. I may have done so prior or after.

20 Q. Okay. During the negotiations, did you  
21 keep any documentation of your discussions?

22 A. Well, I retained documents of my

1 involvement in the process. I don't know if these  
2 reflect discussions with Enron or other personal  
3 notes or things of the nature -- things of that  
4 nature.

5 JUDGE SAINOT: Mr. Brady, why don't we  
6 take a ten-minute break?

7 MR. BRADY: That's fine.

8 (A recess was taken.)

9 JUDGE SAINOT: Back on the record.

10 BY MR. BRADY:

11 Q. Mr. Wear, in your role in analyzing the  
12 GPAA -- was that a fair statement you were  
13 analyzing?

14 A. I think I evaluated. I analyzed. I did a  
15 lot of things. You can use a lot of different  
16 terms about what it is that I did.

17 Q. Okay. Did you analyze the provision  
18 regarding base load and the quantities for base  
19 load?

20 A. I'm sure I was involved in the development  
21 of those numbers.

22 Q. Were you also involved in the development

1 of the summer incremental quantity, the SIQ, and  
2 the daily incremental quantity, the DIQ?

3 A. Yes.

4 Q. Do you have a copy of the North Shore  
5 GPAA, Mr. Wear?

6 A. No.

7 Q. You don't.

8 Let me see if I can do it without actually  
9 showing you the contract. I'm finding a copy of it  
10 right now. Section 4 of the contract relates to  
11 pricing. And 4.2 relates -- sets forth the  
12 provisions for flexible pricing.

13 Were you involved in the analysis and the  
14 evaluation of that aspect of the contract?

15 A. The flexible pricing provision is a common  
16 provision of all of our supply agreements. I'm  
17 sure that the inclusion of that provision in the  
18 GPAA would have occurred without my participation,  
19 but I may have had something put into that.

20 Q. You had mentioned in response to one of my  
21 questions that you had kept documents relating to  
22 your involvement in meetings related to the GPAA.

1 Did you rely upon those in making your assessment  
2 and your recommendation about the GPAA?

3 A. A lot of them were documents that served  
4 to help us get to the point where we finally were  
5 at with the GPAA in its final form. So they would  
6 have referred to -- you know, oftentimes, they  
7 would have referred to things that were -- had  
8 similarities to the contract but were not really  
9 part of the final agreement. They were just part  
10 of the road map that got us there.

11 My evaluation of the GPAA in its final  
12 form, as I mentioned, was did it meet the needs of  
13 the company; did it satisfy the requirements that  
14 we had set forth; did I feel that it was going to  
15 do what we wanted it to do. And I don't think I  
16 needed to rely on any of those or -- I don't think  
17 I relied on any documents that I saved or might not  
18 have saved in order to come to that conclusion.

19 Q. Were the meetings regarding the GPAA for  
20 North Shore conducted at separate times than they  
21 were from Peoples Gas?

22 A. The Peoples Gas contract and the North

1 Shore contract are similar but not identical. I  
2 think, by and large, when we were discussing those  
3 common provisions, we weren't thinking necessarily  
4 that we were negotiating for one company or the  
5 other.

6 But obviously there were provisions that  
7 are specific to one company or the other. And the  
8 conversation could have switched back and forth  
9 between general topics and specific topics fairly  
10 quickly. We didn't have necessarily a meeting to  
11 discuss Peoples Gas followed by a meeting to  
12 discuss North Shore Gas if we were discussing  
13 common things.

14 So I don't know how else to characterize  
15 it. There was a variety of ways in which we  
16 discussed the contracts.

17 Q. Is it fair for me to characterize what you  
18 just said as far as you spoke -- we spoke about the  
19 contract generally and specifically. When you  
20 spoke about things generally, it was items that  
21 were common between the two contracts and  
22 specifically would be items that were only specific

1 to each contract such as the discount price which  
2 was different for each contract?

3 Would that be a fair understanding of what  
4 you were conveying?

5 A. I don't know if that example that you put  
6 forth would replicate my thinking when I said that.  
7 For example, the discounts, although they are --  
8 one is two cents and one is three cents. I think  
9 when we were talking about the discount, people who  
10 were talking about the discount would have  
11 understood it in same general sense for each  
12 company.

13 In the same way, a base load quantity  
14 would have the same general meaning behind it, even  
15 though the base load quantity of one contract would  
16 be significantly different than the base load  
17 quantity in another contract.

18 So, again, I couldn't divide the  
19 conversations of the negotiations along any  
20 specific lines like that.

21 Q. Do you have Exhibit D, which is your  
22 rebuttal testimony? On page -- I'm sorry. It's



1 Exhibit H, your additional rebuttal testimony. On  
2 page 5 near the top in this section, you're  
3 responding to -- you're discussing Mr. Rodriguez's  
4 analysis. Do you know Mr. Rodriguez's analysis to  
5 be also known as the Aruba analysis?

6 A. Yes.

7 Q. And then on lines 81 to 83 you talk about:  
8 Although the company did not rely on  
9 Mr. Rodriguez's analysis, it was cognizant of what  
10 the results of the analysis showed, namely one  
11 possible outcome among many.

12 Did I read that correctly?

13 A. Yes.

14 Q. You said it was -- when you say it, you're  
15 referring to the company there, correct: It was  
16 cognizant?

17 A. Yes.

18 Q. And the company was cognizant of what the  
19 results of the analysis showed.

20 What results were you referring to there?

21 A. Well, as I recall, Mr. Rodriguez's  
22 analysis, it was a forward-looking approach to

1     evaluating the GPAA with the projected basis  
2     information that he had available to him.  And  
3     those results, I think, showed that the basis  
4     differentials would have in -- I guess I don't  
5     recall exactly what the results were, but that was  
6     one scenario that the company understood could  
7     happen, as well as there would be other scenarios.

8           Q.     Was the Aruba analysis, or as you referred  
9     to it as the Rodriguez analysis, discussed in your  
10    evaluation of the North Shore GPAA?

11           A.     Could I have the question repeated for me?

12                   JUDGE SAINSOT:  Sure.

13                           (Record read.)

14    BY THE WITNESS:

15           A.     No.

16    BY MR. BRADY:

17           Q.     You say here in your testimony that the  
18     company was cognizant of the results of the  
19     analysis, yet it wasn't discussed at that time?

20           A.     I'm sorry?

21           Q.     I can rephrase it.

22                   We were just looking at a sentence in your

1 testimony, lines 1 -- lines 81 to 83 that said the  
2 company was cognizant of the results of the  
3 analysis. And my question to you was that you  
4 didn't -- the company did not review the Rodriguez  
5 analysis with respect to the GPAA despite being  
6 cognizant of its results.

7 A. We were -- I think it says cognizant of  
8 what the results of the analysis showed. And I  
9 think that the results of the analysis showed one  
10 particular possible outcome that we understood was  
11 a possibility.

12 We also understood that there were other  
13 possible outcomes for the GPAA that we did not have  
14 an analysis to have to make us aware of them. We  
15 knew about them, whether there was analysis behind  
16 it or not. We understood the way the GPAA would  
17 perform under various circumstances.

18 Q. How did the company become cognizant of  
19 the Rodriguez analysis?

20 A. I think the company first become aware of  
21 it during this proceeding.

22 Did you ask me how did the company become

1       aware of Mr. Rodriguez's analysis?

2           Q.     If you want to substitute aware for  
3       cognizant, my word that I used was cognizant.  
4       You're replacing it with aware, but...

5                   I was under the impression from your  
6       testimony that you were stating that the company  
7       was cognizant of the results of the analysis.

8           A.     No; that the company was aware of what the  
9       results of the analysis showed.

10          Q.     At what time?

11          A.     I think there's confusion over what I  
12       testified to. And what I testified to is that this  
13       analysis that Mr. Rodriguez did shows something.  
14       There's a result. Those results were known to the  
15       company through its understanding of the market and  
16       an understanding of the way the GPAA behaved, not  
17       because of Mr. Rodriguez's analysis, though.

18                   It's like asking, you know, is this -- is  
19       two plus two four. I know that not because I have  
20       to be shown the equation and the elementary math  
21       behind it. I know it to be true for other reasons.

22          Q.     You're aware that the Rodriguez analysis

1 is an economic analysis, correct?

2 A. I believe it's been characterized that  
3 way, yes.

4 Q. Were there other economic analyses that  
5 were developed about the GPAA to your knowledge?

6 MR. MULROY: Your Honor, I would ask that  
7 maybe we ask counsel to define the term economic  
8 analysis which has been thrown around a lot along  
9 with financial analysis.

10 MR. BRADY: I thought I had just by  
11 referring to the Rodriguez analysis as being an  
12 economic analysis.

13 MR. MULROY: I think the witness has said  
14 that he had heard people were referring to it as  
15 that, but I don't think it was defined.

16 JUDGE SAINOT: Can you get a little more  
17 specific, Mr. Brady? I don't think he has to get  
18 much more specific, though.

19 BY MR. BRADY:

20 Q. Mr. Wear, have you -- I guess I'll ask a  
21 couple questions.

22 Have you seen the Rodriguez analysis?

1           A.     Yes.

2           Q.     If I were to show you the Aruba analysis,  
3     would that refresh your recollection as to what I  
4     mean by -- or would that demonstrate to you what I  
5     mean by an economic analysis?

6           A.     Well, I think that regardless of what I  
7     see, if you showed me Mr. Rodriguez's analysis,  
8     that may not encompass everything that an economic  
9     analysis defines. But --

10          Q.     So then you have some concept of an  
11     economic analysis? I'm asking your understanding  
12     of an economic analysis.

13          A.     The phrase can be interpreted in a lot of  
14     different ways.

15          Q.     All right. An economic analysis which  
16     would be an analysis of the economic effect the  
17     GPAA had on rate payers.

18                 MR. MULROY: I'm sorry. Was that a  
19     question or your definition?

20                 MR. BRADY: That was the definition.

21     BY MR. BRADY:

22          Q.     So I guess going then back to the question

1 was -- going back to the question, are you aware of  
2 other scenarios that were analyzed using an  
3 economic analysis?

4 A. Well, I'm aware of the ones that  
5 Mr. Rearden did. I'm aware of the ones that  
6 Mr. Graves did. And I'm sure there are others.

7 Q. Thank you. You pointed out a flaw in my  
8 question as far as timing. I was looking for  
9 economic analysis looked at by the people who were  
10 analyzing the GPAA prior to entering into a  
11 contract in September of 1999.

12 MR. MULROY: Can we have a moment, your  
13 Honor?

14 JUDGE SAINSOT: Sure.

15 (Brief pause.)

16 BY THE WITNESS:

17 A. Mr. Brady, as I understand your definition  
18 of economic analysis, it's the economic effect the  
19 GPAA had on rate payers; is that correct?

20 BY MR. BRADY:

21 Q. Yes.

22 A. So at the time period before the GPAA was

1     in effect, there would be no analysis that would  
2     show what -- the economic effect the GPAA had on  
3     rate payers. There couldn't be.

4             I guess had or could have is where I'm  
5     confused. If it had an effect, it means it would  
6     already have had to have occurred. And before  
7     there was a contract, there couldn't have been  
8     anything to look at.

9             Q.     Thank you. Would you mind if I substitute  
10    would as opposed to had or could? That would have.

11            A.     Where are you substituting that: In your  
12    definition or in your question or -- I think we  
13    need to start all over here.

14            Q.     Mr. Wear, are we on the same page as far  
15    as economic analysis? You had referred to the  
16    word -- you said you had a problem with the word  
17    had which I believe was in my question. So let me  
18    go back to --

19            A.     It was in your definition of economic  
20    analysis.

21            MR. MULROY: He didn't say he had a  
22    problem.



1 BY MR. BRADY:

2 Q. Okay. The economic effect that a contract  
3 could have or would have on utility customers. And  
4 the question then being do you have that -- so  
5 we're looking at the potential impact on customers.

6 MR. MULROY: I'm sorry. Now you just  
7 added something, the potential. Where did you put  
8 that?

9 MR. BRADY: Could or would; planning. Are  
10 we on the same page?

11 MR. MULROY: You just added potential.  
12 You just added the word potential. Just tell me  
13 where it goes.

14 MR. BRADY: It's not in the definition.  
15 Mr. Mulroy, I believe you're being difficult.

16 JUDGE SAINSOT: Okay. We're taking ten  
17 minutes.

18 (A recess was taken.)

19 JUDGE SAINSOT: We're back on the record.

20 BY MR. BRADY:

21 Q. Mr. Wear, I think your counsel had pointed  
22 out -- let me back up.

1           I had made a statement about the potential  
2   and so forth. I'll retract that and just go back  
3   to the definition, the most recent definition that  
4   I gave you of economic analysis.

5       A.    Okay. And if I may say what I believe  
6   that to be?

7       Q.    Sure.

8       A.    And that's the effect -- the economic  
9   effect that a contract could or would have on  
10   utility customers.

11      Q.    That's correct.

12      A.    Okay.

13      Q.    You understand that utility customers  
14   being the same as a rate payer?

15      A.    Yes.

16      Q.    So going back to the time period in which  
17   the GPAA was being negotiated prior to  
18   September 17th, 1999, were there any economic  
19   analyses documented by or seen by any of the people  
20   involved in evaluating the North Shore GPAA?

21      A.    I don't recall any economic analyses done  
22   at that time period that meet that definition.

1           Q.    Do you recall any economic analysis  
2 performed prior to the signing of the GPAA that was  
3 beneficial to rate payers?

4           A.    I don't recall any analyses being done at  
5 that time period that had either positive or  
6 negative results.

7                   MR. BRADY:   Your Honor, may I approach the  
8 witness?

9                   JUDGE SAINSOT:   Yes, you may.

10                  MR. BRADY:   Your Honor, I'd like to have  
11 this marked for identification as Wear Cross  
12 Exhibit Number 1.

13                  JUDGE SAINSOT:   Okay.

14                               (North Shore Wear Cross-Examination  
15                               Exhibit No. 1 marked for  
16                               identification, 4-22-05.)

17 BY MR. BRADY:

18           Q.    Mr. Wear, do you recall producing a  
19 document -- I guess the documents on your computer  
20 being produced to the parties who were in the  
21 Peoples Gas case?

22           A.    Yes.

1           Q.     And I will represent to you that this is a  
2     document that I had pulled off the disk that was  
3     provided to us, which is this that was labeled with  
4     your name on it.

5                     Have you seen this exhibit before, this  
6     document before?

7           A.     This looks like a document that Mr. Jolly  
8     showed me on Wednesday in the Peoples Gas docket.  
9     When he asked me about it, I believe I responded  
10    that I did not recall having seen it before that  
11    time. When it was placed in front of me, my  
12    reaction was I had not -- did not recall it, had  
13    not seen it before. And that was why I answered in  
14    that fashion.

15                    So other than having become familiar with  
16    it since then, my answer would have been the same.

17           Q.     Since that time, has your -- I'm sorry.  
18    Your said your answer was the same. So since that  
19    time, you do not recall actually reviewing this  
20    document prior to the GPAA being signed?

21           A.     I've got no recollection of producing this  
22    document. I've got no recollection of the

1       circumstances that would have led me to produce  
2       this document. I don't recall having reviewed this  
3       document after its creation for any purpose. And  
4       when I say produced, I mean created.

5           Q.     So then since Wednesday, though, you have  
6       looked -- have you looked at this document -- let  
7       me rephrase that question.

8                   Since Wednesday, have you found this  
9       document on your computer?

10          A.     I found it in the location that was  
11       described to us on Wednesday. Again, I don't --  
12       it's not physically on my computer. It's not the  
13       same computer I had in 1999, but it's in an area of  
14       the company's computer system that's assigned to  
15       me.

16                   MR. MULROY: Your Honor, if I may while  
17       there's a pause in the action, I'd like to put in  
18       the record that at your request, after the  
19       testimony about this document was given by Mr. Wear  
20       in the Peoples docket, I asked Mr. Wear to search  
21       the computer that he has now pursuant to the file  
22       path that Mr. Jolly gave to us, which is how

1 Mr. Wear located the document.

2 JUDGE SAINSOT: Thank you, Mr. Mulroy.

3 BY MR. BRADY:

4 Q. Mr. Wear, if I may ask, do you see in the  
5 upper left-hand corner it says October '95? Do you  
6 see that date?

7 A. Yes.

8 Q. It --

9 JUDGE SAINSOT: For the record, this is  
10 the same thing that Mr. Jolly produced, the exact  
11 same thing, isn't it?

12 MR. BRADY: Yes, it is.

13 MR. MULROY: That exhibit, I guess for the  
14 record's clarity, is marked Wear Cross Exhibit --

15 MR. BRADY: Cross Exhibit 15.

16 JUDGE SAINSOT: So let's call this Wear  
17 Cross Exhibit 15.

18 MR. BRADY: Okay.

19 MR. KAMINSKI: That is a different docket.  
20 Wouldn't it be better to maybe call this North  
21 Shore?

22 JUDGE SAINSOT: Right. It's Wear Cross

1 Exhibit 1.

2 MR. BRADY: North Shore Cross Exhibit  
3 Number 1?

4 JUDGE SAINOT: Right.

5 MR. BRADY: Okay.

6 BY MR. BRADY:

7 Q. Does this appear to perform an economic  
8 analysis from October '95 to September of 1999?

9 A. I'm sorry. From what period to what  
10 period?

11 Q. From October 1995, which is in the upper  
12 left-hand corner, to September 1999 in the bottom  
13 right-hand corner.

14 A. Well, again, I'll refer to I think our  
15 agreed-to definition of an economic analysis, that  
16 being one where a contract -- the economic effect  
17 of a contract -- that a contract could or would  
18 have utility rate payers positive or negative. I  
19 think we kind of arrived at that point.

20 Since these dates all occur in the past, I  
21 don't know that anything in here would or could  
22 affect the rate payers either way since, you know,

1 any costs incurred by the rate payers would cost --  
2 would occur in the future.

3 Q. Let me ask you this. In the GPAA, the  
4 GPAA was an agreement between North Shore and Enron  
5 North America, correct?

6 A. Yes.

7 Q. Do you see on the document under actual  
8 PGL, it says Enron North America proposal?

9 A. Yes.

10 Q. The GPAA included terms, prices that  
11 related to first of the month, correct?

12 A. Yes.

13 Q. And first of the month is abbreviated as  
14 FOM?

15 A. That's a common abbreviation, yes.

16 Q. And do you see FOM purchases on this?

17 A. Yes.

18 Q. And the GPAA, there's also -- you're  
19 familiar with the DIQ, the daily incremental  
20 quantity?

21 A. Yes.

22 Q. And those purchases are on the daily



1 price?

2 A. That's correct.

3 Q. And do you see that there is a line that  
4 says daily purchases?

5 A. Yes.

6 Q. And do you see that there's a line that  
7 says FOM minus .03?

8 A. Yes.

9 Q. And wasn't the North Shore contract first  
10 of the month minus two cents?

11 A. Yes.

12 Q. So after reviewing those terms and your  
13 familiarity with the GPAA, would you say that this  
14 performs some sort of analysis of the GPAA?

15 A. This appears to attempt to back cast some  
16 type of analysis of purchases at the first of the  
17 month and at the daily price and compare it to  
18 actual purchases that did occur.

19 Q. Thank you.

20 MR. BRADY: Your Honor, Staff would like  
21 to move this exhibit into the record, not for the  
22 actual dollar amounts that are in this because it

1     does use a different FOM minus three cents, but  
2     strictly for the fact that this was a document that  
3     was on Mr. Wear's computer which we believe --

4             JUDGE SAINSOT:  Are you trying to say,  
5     Mr. Brady, that you're only asking for it to be  
6     admitted for impeachment purposes and not as  
7     substantive evidence?

8             MR. BRADY:  It is substantive evidence to  
9     the fact that there was an economic analysis that  
10    was performed prior to entering into the contract.

11            JUDGE SAINSOT:  I agree that is impeaching  
12    evidence, not substantive evidence.

13            MR. BRADY:  Then we would move that as --  
14    my only disagreement with that is that is as to  
15    Mr. Wear's testimony -- okay.  There's movement for  
16    purposes of impeachment.

17            JUDGE SAINSOT:  Mr. Mulroy?

18            MR. MULROY:  Your Honor, I would renew the  
19    objection I made in the earlier case that there has  
20    been no showing that this is an impeaching document  
21    of Mr. Wear.  It was shown to him first to refresh  
22    his recollection as to whether or not an economic

1     analysis was performed. He said he didn't remember  
2     preparing it; doesn't know anything about it. I  
3     don't see how this impeaches his testimony, so on  
4     that ground, I would object to the completion of  
5     the impeachment.

6             JUDGE SAINSOT: Well, I disagree,  
7     Mr. Mulroy. Your motion is granted.

8             MR. BRADY: Thank you.

9             JUDGE SAINSOT: Just for the record, North  
10    Shore Cross Exhibit Number 1 is admitted into  
11    evidence.

12            Do you have a lot more, Mr. Brady?

13            MR. BRADY: I'm not sure if I have any  
14    more. I'm just double-checking.

15            JUDGE SAINSOT: Okay.

16                    (Brief pause.)

17            MR. BRADY: Your Honor, we have no further  
18    questions at this time.

19            JUDGE SAINSOT: Do you have any questions  
20    for Mr. Wear?

21            MS. SODERNA: No, we don't.

22            JUDGE SAINSOT: I just have two or three

1 questions for Mr. Wear.

2 EXAMINATION

3 BY

4 JUDGE SAINSOT:

5 Q. Mr. Wear, you testified about a possible  
6 dramatic decline in basis. Could you be a little  
7 more specific about that?

8 A. Yes, your Honor. The one-cent decline in  
9 basis that we've talked about already this morning  
10 was what we felt one base case that represented  
11 what might happen under certain circumstances.

12 The company felt that there were other  
13 possibilities that existed, namely the introduction  
14 of a lot more pipeline capacity coming to the City  
15 of Chicago to the market area and if those projects  
16 were actually completed that that would lead to the  
17 Chicago market being oversupplied with natural gas  
18 relative to the field locations. That would cause  
19 the decline in basis to occur much more rapidly  
20 than the one cent. It could occur even to the  
21 point where cheaper prices would be available in  
22 Chicago versus the field locations.

1 Q. Thank you.

2 It's been a long time since I've looked at  
3 the North Shore contract, so correct me if I'm  
4 wrong. The North Shore contract had an SIQ?

5 A. Yes, it did.

6 Q. And is it fair to say that pursuant to the  
7 SIQ provision, North Shore had no control over how  
8 much gas it got?

9 A. Under the North Shore contract, there was,  
10 I believe, a 5,000-a-day minimum SIQ requirement  
11 and a 10,000-a-day maximum.

12 Q. Okay.

13 A. And that was at the seller's discretion.

14 Q. Okay. So there were some provisions.  
15 Thanks.

16 You testified about the Aruba analysis.  
17 Did you actually read that analysis before the  
18 contract with Enron was signed?

19 A. No, your Honor. I first became aware of  
20 it during the discovery process of this  
21 proceeding -- or of the Peoples proceeding.

22 JUDGE SAINSOT: Okay. Thank you. I have

1 no further questions. Any redirect?

2 MR. MULROY: I have just a little bit.

3 REDIRECT EXAMINATION

4 BY

5 MR. MULROY:

6 Q. The SIQ provision you just testified  
7 about, was that a bad provision for the company?

8 A. I think the company's position was that it  
9 was not a bad provision.

10 Q. Well, if it didn't have any control over  
11 the gas, why wouldn't that make it a bad provision?

12 A. Because all volumes purchased under the  
13 SIQ provision would have been at the applicable  
14 first of month price, which was a market base price  
15 and were subject to a two-cent discount.

16 Q. Well, it sounds like Enron can take  
17 advantage of the company under the SIQ. Is that  
18 true?

19 A. I don't -- I don't think that that's a  
20 correct characterization of an SIQ.

21 Q. Why not?

22 A. Because the company was willing to

1 purchase that amount of gas at the base load -- I'm  
2 sorry -- at the first of month price and felt that  
3 that was not a bad thing.

4 Q. Well, when you say willing, does that mean  
5 it was necessary to make those purchases?

6 A. Yes. Those S- -- anything purchased under  
7 the SIQ provision would have been used and useful  
8 during the summer months for storage injection.

9 Q. You talked about this decline in basis.  
10 Can you tell us why there was a projected decline  
11 in basis?

12 A. It was primarily due to the alliance  
13 pipeline and the northern border pipeline  
14 expansion, both of which were due to come into  
15 service sometime after the GPAA or thereabouts,  
16 either near the start of the GPAA or shortly  
17 thereafter. And again, that would have created the  
18 oversupply situation that we felt was going to lead  
19 to this decline in basis.

20 Q. Why would it create an oversupply  
21 situation?

22 A. Because there was more delivery capability

1 to the market area than there was either native  
2 market or take-away capacity on other pipelines.

3 Q. When was this projection made? When did  
4 the company start to project a possible decline in  
5 basis?

6 A. I think we were studying those reports  
7 from various entities, such as CERA, for perhaps a  
8 year leading up to the GPAA.

9 Q. Now, is there a transportation credit  
10 provision in the North Shore GPAA?

11 A. Yes. It was implied in the two-cent  
12 discount that as a result of Enron being able to  
13 optimize transportation assets that the company  
14 felt it should get a portion of that returned to it  
15 in terms of economic value. And that resulted in  
16 the two-cent credit.

17 Q. And was that a good provision, in your  
18 opinion?

19 A. Yes, because if the company continued to  
20 purchase and deliver gas on its own transportation  
21 and this potential dramatic decline of basis  
22 occurred, there might have been no transportation



1 value as a result of that. So this preserved that  
2 right -- or preserved that value.

3 Q. You testified that you performed a role in  
4 evaluating the GPAA. In particular, you examined  
5 how the contract operated and whether it met the  
6 company's needs. Could you expand on what exactly  
7 you did?

8 A. I would have been tasked with the  
9 responsibility of making sure that there was enough  
10 flexibility in the contract to meet the varying  
11 weather patterns that the company typically sees;  
12 that it would have had the amounts of gas available  
13 to the company on a firm basis at the locations  
14 that it was needed to receive the gas in order to  
15 make it useful; and that it met the other criteria  
16 that we had established as part of the negotiation  
17 process.

18 Q. How did you go about doing that? Did you  
19 look at documents? Did you do analyses? Did you  
20 meet with other people? What did you do?

21 A. We did all of those things. We tested the  
22 provisions, where appropriate. We negotiated

1 changes where we thought changes needed to be made.  
2 We refined the analysis and repeated it and  
3 eventually arrived at what we felt was a final  
4 product that was a good contract for the company to  
5 enter into.

6 Q. You said you refined the analysis and  
7 reviewed it. What do you mean by analysis?

8 A. It could be written analysis. It could be  
9 different types of models that we might have  
10 available to us. It could be simply the types of  
11 discussions that you mentioned, things that would  
12 have been testing our thinking and our  
13 understanding of gas supply contracts in general  
14 and the gas supply market in general.

15 Q. And when you say we, are you including  
16 this large group that you testified to on  
17 cross-examination?

18 A. Yes.

19 Q. Now, why was it that in the course of this  
20 analysis you or someone under your direction did  
21 not perform an economic analysis?

22 A. The company understood the way that the

1 contract would perform and what the results would  
2 be under various circumstances. An economic  
3 analysis wasn't necessary each step of the way in  
4 order to make us aware of those possibilities.

5 Q. How could you understand those  
6 possibilities without an economic analysis?

7 A. Because we do it every day as part of our  
8 jobs.

9 Q. Now, from time to time would people  
10 exchange ideas and opinions with you about the GPAA  
11 and its effect?

12 A. Yes.

13 Q. During the course of your analysis of the  
14 GPAA, were the terms changing from time to time?

15 A. Yes.

16 Q. And would that mean that some opinions  
17 would be wrong?

18 A. Yes.

19 Q. Did you review a variety of options which  
20 applied to the GPAA and its numerous provisions?

21 A. Yes.

22 Q. How many options would you have reviewed,

1 if you can recall?

2 A. There would have been countless different  
3 possibilities for us to review. And we probably  
4 did our best to study them all.

5 But just, for example, if you take three  
6 different components of the contract price,  
7 weather, and how it fits into our system, along  
8 with the other deliveries from transportation  
9 customers, those three elements could each have  
10 three different levels. You could have a high  
11 price environment, a low price environment, or a  
12 normal-priced forecast. And similarly with  
13 weather, you can have colder than normal, warmer  
14 than normal, or normal weather.

15 Just matching those three provisions with  
16 three different possibilities means that there were  
17 27 different possibility outcomes to review. And  
18 we often reviewed in such fashion to try and get as  
19 complete a view of what the contract might do.

20 Q. And you keep using the word we. How many  
21 people were involved in this analysis?

22 A. As I mentioned to Mr. Brady, the amount of

1 involvement of different people would vary, but  
2 probably the total number of people from our  
3 company alone was several dozen.

4 Q. And who is Roy Rodriguez?

5 A. Mr. Rodriguez was an employee of Peoples  
6 Energy in the risk management area, and I believe,  
7 as we've established, he was involved in the  
8 process of determining the qualifications for the  
9 fixed gas charge proposals.

10 Q. Why is Mr. Rodriguez's document that  
11 Mr. Brady has showed you referred to as Project  
12 Aruba?

13 A. I don't know how it got that name. I  
14 think Aruba was a term that was generally applied  
15 to the whole process of our negotiations with  
16 Enron, and that just kind of stuck.

17 Q. It was a deal name?

18 A. No. It was just the name that applied to  
19 the process in general.

20 Q. Did you hear Mr. Rearden testify that he  
21 did not agree with everything in Mr. Rodriguez's  
22 analysis?

1                   MR. BRADY: Your Honor, I'm going to  
2     object as far as I'm not sure how this is  
3     necessarily redirect since he's talking about  
4     Mr. Rearden. Mr. Rearden wasn't involved in his  
5     questions. I think if this is a setup question for  
6     something else, that's fine. I'm willing to give  
7     you that leeway. I'm just not seeing the...

8                   JUDGE SAINSOT: Mr. Mulroy?

9                   MR. MULROY: Well, Mr. Brady  
10    cross-examined this witness about page 4 of his  
11    Exhibit H where Mr. Rearden is mentioned several  
12    times.

13                  And secondly, Mr. Brady is offering this  
14    Rodriguez analysis, I guess, as some kind of a  
15    document maybe that should have been relied on by  
16    someone, and I'm trying to clarify the record in  
17    that regard.

18                  JUDGE SAINSOT: I'll allow it. It was in  
19    the direct.

20    BY MR. MULROY:

21                  Q. Are you aware that Dr. Rearden -- I should  
22    say Doctor. I apologize -- said that he did not

1 agree with everything in this Rodriguez document?

2 A. I believe that he disagreed with the use  
3 of a liquidity adjustment, price liquidity  
4 adjustment, among perhaps other things.

5 Q. Do you know when this document was  
6 prepared by Rodriguez?

7 A. I'm sorry. I don't recall.

8 Q. And do you recall -- I think Mr. Brady  
9 asked you this. Do you recall reviewing it?

10 A. I did not review it in my evaluation or  
11 review of the GPAA. I only became aware of it in  
12 the proceedings that we're in here.

13 Q. Now, on page 4 of your Exhibit H at  
14 line 79, you said: Mr. Rodriguez's analysis has  
15 been one scenario that predicts the performance of  
16 the GPAA. Dr. Rearden's analysis is yet another.  
17 The CERA scenarios Mr. Graves describes in his  
18 initial rebuttal testimony are yet more.

19 Do you see that?

20 A. Yes, I do.

21 Q. And is that still your testimony?

22 A. Yes, it is. I think it describes the

1 range of outcomes from the less dramatic cases to  
2 the more dramatic cases that I was referring to  
3 before.

4 Q. Despite the fact that you don't agree with  
5 what's in Rodriguez's analysis and despite the fact  
6 that Mr. -- or Dr. Rearden does not agree with  
7 everything in his analysis, would you consider this  
8 Rodriguez document to be determinative of the  
9 prudence of the GPAA?

10 MR. BRADY: Your Honor, I'm going to  
11 object to the characterization that Mr. Wear  
12 disagrees with Mr. Rodriguez's analysis. I believe  
13 he said that they were cognizant of it at the time  
14 and that it was only one other analysis. He didn't  
15 actually say that he had reviewed it or commented  
16 on whether it was appropriate or not.

17 MR. MULROY: On page 4, which is what  
18 Mr. Brady used to cross-exam, the witness'  
19 testimony is: Well, certain items in the Rodriguez  
20 analysis -- and I'm paraphrasing -- matched --

21 JUDGE SAINOT: Which document? I'm  
22 sorry.



1 MR. MULROY: Page 4 of Exhibit H.

2 JUDGE SAINSOT: Okay.

3 MR. MULROY: -- (continuing) matched those  
4 in the GPAA. There are differences as well.

5 MR. BRADY: I'm sorry. In the document  
6 where are you? Exhibit H, page 4?

7 MR. MULROY: Right, line 68.

8 JUDGE SAINSOT: And your objection again,  
9 Mr. Brady, is what? I'm not quite sure I  
10 understand it.

11 MR. BRADY: In Mr. Mulroy's question, he  
12 said when you stated that you disagreed with  
13 Mr. Rodriguez's analysis, and my question related  
14 to Mr. Wear's comment, Mr. Wear's testimony on  
15 lines 81 to 83 where they were talking about the  
16 company being cognizant of the results showed;  
17 mainly, there's one possible among many. He didn't  
18 actually say that they disagreed -- or he didn't  
19 state that today. I believe today he stated that  
20 he hadn't actually reviewed it.

21 JUDGE SAINSOT: I understand that part.

22 I'm just not sure what you want me to do with that.

1 Can he rephrase?

2 MR. BRADY: Sure.

3 JUDGE SAINSBOT: Okay. Just rephrase  
4 Mr. Mulroy.

5 BY MR. MULROY:

6 Q. Do you agree with that this Rodriguez  
7 report is determinative of the prudence of the  
8 GPAA?

9 A. No. I think it has some shortcomings.

10 Q. And what are they?

11 A. Well, as I testified to in my additional  
12 rebuttal, that the provisions are not identical to  
13 those in the way the contract was finally executed.

14 Q. So this report was not relevant in the  
15 sense that certain terms were changed before the  
16 contract was signed that were referred to in the  
17 Rodriguez documents?

18 A. Yes. It's not relevant for that reason.  
19 Plus, it's not relevant because it wasn't relied on  
20 by the people who were involved in the  
21 decision-making process.

22 Q. Well, based on that fact, had you relied

1 on these Rodriguez papers, that would have been a  
2 prudent way to make a decision on whether this  
3 contract was good or not; isn't that true?

4 A. I believe that's true.

5 Q. Let me also now refer you to Wear  
6 Cross-Examination Exhibit Number 1 which Mr. Brady  
7 asked you several questions. Do you see that?

8 A. Yes.

9 Q. Do you have any recollection as to when  
10 that was prepared?

11 A. Only from the information that's been  
12 provided that indicates that it was created on  
13 September 8th, 1999, and last modified on  
14 September 10th, 1999.

15 Q. And you have no reason to doubt that  
16 that's accurate, do you?

17 A. No.

18 Q. Was this document, which you do not  
19 recall, determinative of the prudence of the GPAA  
20 or lack thereof?

21 MR. BRADY: Object to how he can make that  
22 evaluation if he has -- he's already testified to

1 the fact that he hasn't seen it and he's not  
2 familiar with it.

3 JUDGE SAINSOT: Right. The objection is  
4 sustained.

5 BY MR. MULROY:

6 Q. I accept that, and you agree with counsel  
7 that you've never seen this document before this  
8 proceeding; is that correct?

9 A. I have no recollection --

10 Q. No recollection.

11 A. -- of seeing it prior to Wednesday when it  
12 was shown to me.

13 Q. And you have no recollection of relying on  
14 it in any way in connection with your work on the  
15 GPAA; is that correct?

16 A. That's correct.

17 MR. MULROY: That's it for me, Judge.

18 JUDGE SAINSOT: Any recross?

19 MR. KAMINSKI: Yes, your Honor.

20 JUDGE SAINSOT: Do you know, why don't we  
21 break for lunch?

22 MR. KAMINSKI: I don't expect to be going

1 too long.

2 JUDGE SAINOT: Okay. Then we can get  
3 Mr. Wear out. Okay.

4 RECROSS-EXAMINATION

5 BY

6 MR. KAMINSKI:

7 Q. Mr. Wear, you were asked questions on  
8 redirect regarding whether the SIQ was a bad  
9 provision, correct?

10 A. I don't recall if he said it was a bad or  
11 good. I think my testimony should say that I don't  
12 think it was a bad provision.

13 Q. And you agree that there is an option that  
14 Enron North America has to provide between 5 and  
15 10,000 MM BTUs per day under the SIQ provision?

16 A. Yes.

17 Q. Did you evaluate the value of that  
18 flexibility to Enron North America?

19 A. No.

20 Q. You also testified on redirect regarding  
21 the declining basis issue, correct?

22 A. Yes.

1           Q.     And you stated that there was -- the  
2     reason for the potential decline -- that was the  
3     basis of a question of both myself and the  
4     Administrative Law Judge Sainsot -- was that there  
5     was two new pipelines that were supposed to be  
6     coming into play in the near future?

7           A.     My testimony is that the proposed  
8     extension of the northern border pipeline to  
9     Chicago and the construction of a new pipeline, the  
10    alliance pipeline, from Canada to Chicago were  
11    paramount in our thoughts as to why decline basis  
12    might decline.

13          Q.     And you also testified that you consulted  
14    several publications, including CERA, to see this  
15    information, correct?

16          A.     Well, we didn't need the publications to  
17    let us know that these projects were planned. We  
18    were aware of them. I think the CERA publications  
19    and other information reenforced the belief that  
20    this was going to have an impact on the basis.

21          Q.     And CERA is available generally to the  
22    public?

1           A.     I'm not sure.  Some -- some reports might  
2     be.  Some reports might be available only to  
3     subscribers.  I guess I couldn't attest to one way  
4     or the other.

5           Q.     So this information is not just  
6     proprietary to you, correct?  I mean, when I say --  
7     this information is not proprietary just to North  
8     Shore, correct?

9           A.     That's correct.

10          Q.     And in the charts that were attached to  
11     your additional direct, you have those three charts  
12     that were based on CERA's information, correct?

13          A.     Yes.

14          Q.     And part of that information on those  
15     charts were estimates of the future basis, correct?

16          A.     Yes.

17          Q.     You were also questioned by Mr. Mulroy  
18     regarding the documents, whether you looked at  
19     documents or refined the analysis of the GPAA.  Do  
20     you recall that?

21          A.     Yes.

22          Q.     And do you also recall that he asked

1 questions about what comprised of the analysis?

2 A. Yes.

3 Q. And you stated those analyses could be  
4 written; could be models; could be discussions,  
5 correct?

6 A. Yes.

7 Q. Was this analysis written?

8 A. Which analysis? Written -- the one that  
9 went in to refining our thinking?

10 Q. Yes.

11 MR. MULROY: Wait. I'm sorry. Are you  
12 talking about -- what are you talking about is  
13 written? I'm sorry.

14 MR. KAMINSKI: I'm referring specifically  
15 to the questions that were asked in redirect asking  
16 Mr. Wear to define what he meant by analysis in the  
17 statement he made regarding analysis for the GPAA.

18 MR. MULROY: Well, I don't know what the  
19 question is now. I thought you asked him was  
20 something other written. Could I have the question  
21 back?

22 JUDGE SAINOT: Yes. I think it's fair



1 just read the question back.

2 (Record read.)

3 THE COURT REPORTER: "Question: And you  
4 stated those analyses could be written; could be  
5 models; could be discussions, correct?"

6 MR. MULROY: Right. I didn't know what  
7 that meant: Was this analysis written. That's why  
8 I objected.

9 JUDGE SAINSOT: You mean this -- you don't  
10 know what this refers to? Is that what you're  
11 talking about?

12 MR. MULROY: Right.

13 JUDGE SAINSOT: Well, just rephrase,  
14 Mr. Kaminski.

15 BY MR. KAMINSKI:

16 Q. Mr. Wear, the analysis that you referred  
17 to in your response to a question from Mr. Mulroy  
18 on redirect that he then asked you to clarify and  
19 you answered it could be a written analysis, it  
20 could be models, or it could be discussions, do you  
21 recall that?

22 A. Yes.

1           Q.     That analysis, the analysis that I just  
2     referred to in the earlier question, was there a  
3     written analysis?

4           A.     I think in order to even have a  
5     discussion, we were probably having things written  
6     down. I wasn't referring to a particular analysis  
7     that was written. Some documents were produced in  
8     that process and were relied on and were considered  
9     and then not considered after that.

10          Q.     So you're stating that the group -- and by  
11     the group, I refer to the -- I believe the term was  
12     several dozen or a couple dozen people that were  
13     negotiating and evaluating the GPAA -- that group's  
14     analysis was documented?

15          A.     I'm saying at times we wrote things down.  
16     I'm saying at times a model may have been produced,  
17     a chart or a graph or a table that was useful in  
18     our discussions and in our negotiation and refining  
19     our thinking.

20          Q.     Did any of those models or discussions  
21     involve the provisions that eventually became the  
22     GPAA?

1           A.     I can't recall if they did or not.

2           Q.     You stated in response to one of the  
3     questions of Mr. Mulroy on redirect that the  
4     company understood the effects of the GPAA.  What  
5     was the basis of their understanding?

6           A.     The basis of their understanding is the  
7     cumulative knowledge and expertise that the people  
8     brought to the process.

9           Q.     And there was no documentation as a basis  
10    for their understanding of the effects of the GPAA?

11          A.     I'm not sure I understand your question.  
12    I think I've already said that there were charts  
13    and tables and graphs and notes that were written  
14    that we used, so I don't know how else to answer  
15    that.

16                 JUDGE SAINSOT:  You need to rephrase,  
17    Mr. Kaminski.  I didn't understand that question  
18    either.

19                 MR. KAMINSKI:  That's all I have, your  
20    Honor.

21                 JUDGE SAINSOT:  Okay.

22                 MS. SODERNA:  Your Honor, can I just ask a

1 couple clarifying questions? I know I didn't  
2 participate in cross-examination.

3 MR. BRADY: Staff did have a couple.  
4 Mr. Kaminski did follow a question that I wanted,  
5 but I wanted to take it a couple questions further  
6 at one point.

7 JUDGE SAINSOT: Any objection?

8 MR. MULROY: Yes, sure, but I don't think  
9 it's going to --

10 MS. SODERNA: There are some things on  
11 redirect that raised some questions in my mind.

12 JUDGE SAINSOT: All right. Let's try and  
13 be brief. Okay?

14 MS. SODERNA: I will be brief.

15 CROSS-EXAMINATION

16 BY

17 MS. SODERNA:

18 Q. Along the lines of what Mr. Kaminski  
19 was -- my name is Julie Soderna, by the way, and I  
20 represent the Citizens Utility board.

21 You mentioned that there were general  
22 analyses done, and some of these might have been

1     documented in the form of charts or tables or other  
2     forms of documentation that were -- can I use the  
3     word informal? Is that something you would say?

4           A.     I think in the process of having these  
5     discussions in these analyses and in refining our  
6     thinking, we sometimes wrote things down. We  
7     sometimes produced graphs. We sometimes had  
8     sources of information that were in document form.

9                   We did not document the process or use  
10    documents as -- use written documentation as the  
11    analysis itself, I guess. I feel like I've said  
12    this six or seven different ways, and I'm still  
13    coming up with the same answer.

14          Q.     Well, it's a key point, and we're just  
15    trying to refine it a little more.

16          A.     Well, I don't know how I can refine it any  
17    more for you.

18          Q.     Well, I guess to repeat -- to clarify what  
19    you had said before, none of these analyses would  
20    fit your definition of economic analysis?

21          A.     The definition that was discussed --

22                   MR. MULROY: Well, I object, your Honor.

1 I don't think he testified to that, so -- I don't  
2 understand your question, Ms. Soderna.

3 MS. SODERNA: Well, he's been referring to  
4 different types of analyses -- that the group that  
5 negotiated and analyzed the GPAA, different types  
6 of analyses that that went through. And he  
7 described different types of potential  
8 documentation as a result of that analysis. And I  
9 guess I'm just trying to refine the issue. And he  
10 has said -- he's testified to the fact that there  
11 were no economic analyses done of the GPAA.

12 JUDGE SAINOT: So what's the question?

13 MS. SODERNA: The question is he would not  
14 recall any of these other analyses that we just  
15 heard about on redirect -- that he would not refer  
16 to them as economic analyses.

17 JUDGE SAINOT: Well, are we going to get  
18 into the definition of economic again?

19 MS. SODERNA: We're using the same  
20 definition that was used earlier.

21 MR. MULROY: It just seems like this has  
22 all been asked and answered, but maybe not.

1 MS. SODERNA: Let me withdraw that  
2 question, and I'll ask another one.

3 BY MS. SODERNA:

4 Q. I guess my question along the same lines  
5 is is the reason that you didn't have any  
6 formally-documented analyses that supported your  
7 entering into the GPAA because you and your group  
8 at North Shore thought the deal was so clearly a  
9 good deal that analyses was not necessary -- a  
10 formal documented analysis was not necessary?

11 MR. MULROY: Okay. Now I'm afraid you're  
12 going to have to read the question back.

13 (Record read.)

14 JUDGE SAINSOT: I'm sorry. You're going  
15 to have to rephrase that just in terms of someone  
16 being able to answer it, but Mr. Mulroy, you have  
17 no objection?

18 MR. MULROY: You got there before me.

19 JUDGE SAINSOT: Okay.

20 MR. MULROY: Only because I'm hungry.

21 MS. SODERNA: Okay. I'll rephrase it.

22

1 BY MS. SODERNA:

2 Q. Are you testifying that the GPAA was so  
3 clearly a good deal in the minds of you and your  
4 associates that evaluated it that a formal  
5 documented analysis was not necessary?

6 A. I'm saying that when it was arrived at the  
7 time to make the decision on whether or not to  
8 enter into the GPAA that there had been sufficient  
9 analysis of all kinds through these discussions and  
10 iterations and evaluations that we felt it met the  
11 criteria that we had established and that the  
12 person who ultimately made the decision was  
13 comfortable with it.

14 Q. I just want to switch gears. I have just  
15 a couple questions on the Aruba analysis that was  
16 discussed again on redirect.

17 And I apologize if this is duplicative,  
18 but did anyone at North Shore that you know of  
19 review the Aruba -- so-called Aruba analysis other  
20 than yourself, because you said you had not, before  
21 the GPAA was signed?

22 A. I don't believe anyone at North Shore



1 reviewed it before signing the agreement.

2 Q. Do you know if anyone at North Shore was  
3 aware of the analysis?

4 A. I don't believe anyone at North Shore was  
5 aware of the analysis before the agreement was  
6 signed.

7 Q. But your understanding is that the Aruba  
8 analysis was produced or created before the GPAA  
9 was entered into; is that right?

10 A. Yes, yes. And I am unaware of anyone that  
11 reviewed it or used it as a means to evaluate the  
12 contract before it was signed.

13 Q. And is that the only -- I'm sorry. On  
14 redirect you referred to other analyses that showed  
15 the GPAA was a good deal for rate payers, to  
16 summarize?

17 A. I think I, on the questioning from  
18 Mr. Brady, mentioned Dr. Rearden's analysis --

19 Q. Right.

20 A. -- and Mr. Graves' analyses --

21 Q. Right.

22 A. -- as analyses that were of the GPAA. I

1 understand and recognize that they were not done --  
2 that they were done after the fact.

3 Q. Well, that was my next question. I was  
4 just going to clarify that you were -- that was  
5 your understanding; that those analyses were done  
6 after the fact; the Aruba analysis was done before  
7 the fact.

8 That's your understanding, correct?

9 A. Yes.

10 Q. I guess my final question is how do you  
11 know that the group that evaluated the GPAA, the  
12 North Shore group, how do you know that they did  
13 not rely on the Aruba analysis?

14 A. I'm sorry. How do I know that they?

15 Q. Did not rely upon the Aruba analysis as an  
16 evaluation of the GPAA.

17 A. Well, I've talked to them in the process  
18 of preparing data responses when we were originally  
19 questioned about the Aruba analysis, and I was the  
20 responsible witness for providing the company  
21 response, so I would have participated in those  
22 discussions about who had seen it and who hadn't

1       seen it.

2                   MS. SODERNA:  Thank you very much.  That's  
3       all I have.

4                   JUDGE SAINSOT:  Mr. Brady?

5                   MR. BRADY:  I think I have two questions.

6                               RE CROSS-EXAMINATION

7                               BY

8                               MR. BRADY:

9           Q.       Mr. Wear, going back to your response to  
10       Mr. Mulroy about documentation that you had,  
11       numerous documents as you were refining your  
12       analysis, did the team who was performing the  
13       analysis know that this GPAA would impact the  
14       purchase gas adjustment?

15          A.       Could you repeat that?

16          Q.       Did the team who was performing the  
17       analysis and evaluation of the GPAA know that the  
18       contract would impact the purchase gas adjustment?

19          A.       Well, I think we were all aware that this  
20       was a contract that was going to provide service  
21       for companies' rate payers, yes.

22                   MR. BRADY:  Thank you.  That's all I have.

1 JUDGE SAINSOT: Anything?

2 (No audible response.)

3 JUDGE SAINSOT: Okay. Thank you,

4 Mr. Wear. Why don't we get back here at 2:15?

5 MR. KAMINSKI: 2:15, you said?

6 MR. BRADY: I think all we have left --

7 JUDGE SAINSOT: You only have Ms. Grace

8 left?

9 MS. KLYASHEFF: Ms. Grace and Mr. Zack,

10 neither of whom there's going to be cross on the

11 record is my understanding, so I think this could

12 be wrapped up very quickly.

13 JUDGE SAINSOT: Oh, okay. So if nobody

14 has any questions for Ms. Grace or Mr. Zack...

15 MR. KAMINSKI: No.

16 MS. SODERNA: No.

17 MR. BRADY: Well, and Staff has no

18 questions for Ms. Grace. However, Mr. Zack

19 testified -- since he testifies in both cases,

20 Staff will be moving for the admission -- or moving

21 that the Judge take administrative notice of

22 Staff's cross-examination of Mr. Zack in the

1 Peoples Gas case and we will provide that  
2 transcript at the time when it's available.

3 JUDGE SAINSOT: Right. So what you're  
4 saying is that we could just admit these two and  
5 leave and not come back?

6 MR. BRADY: Yes.

7 JUDGE SAINSOT: Okay. That sounds like a  
8 plan.

9 MS. SODERNA: Are they available?

10 MS. KLYASHEFF: I have an affidavit from  
11 Ms. Grace which I will circulate later. I do have  
12 a copy for the ALJ at this time.

13 Mr. Zack I will have it available in the  
14 next day and will provide that through the docket  
15 for the parties.

16 (Respondent's Exhibits A, E, and G  
17 marked for identification, 4-22-05.)

18 JUDGE SAINSOT: So you're moving for  
19 admission of Respondent's Exhibit E and G which are  
20 the rebuttal testimony and additional rebuttal  
21 testimony of Thomas E. Zack and also Respondent's  
22 Exhibit A. And Ms. Grace didn't have rebuttal?

1 MS. KLYASHEFF: No. Ms. Grace only had  
2 direct testimony in this case, and Exhibit 1 is the  
3 reconciliation statement.

4 JUDGE SAINSOT: Okay. Which is attached  
5 to Ms. Grace's direct testimony?

6 MS. KLYASHEFF: Yes. And at the end of  
7 the packet I handed you is her affidavit.

8 JUDGE SAINSOT: Right. Thank you.

9 Is there any objection to admission of  
10 these documents into the record?

11 MR. KAMINSKI: No, your Honor.

12 MS. SODERNA: No, your Honor.

13 MR. BRADY: None from Staff.

14 JUDGE SAINSOT: That being the case,  
15 Ms. Klyasheff, Respondent's Exhibit A, which is the  
16 direct testimony of Valerie H. Grace, as well as  
17 the attachment to that which concern -- I'm just  
18 looking for the affidavit. I don't see it. Well,  
19 we'll deal with it in a second -- as well as the  
20 attachments to it and Respondent's Exhibit E and G,  
21 which are the rebuttal testimony of Thomas E. Zack  
22 and the additional rebuttal testimony of Thomas E.

1       Zack, are admitted into evidence.

2               We can go off the record.

3               (Discussion had off the record.)

4               JUDGE SAINSOT:   Okay.   So anything  
5   further?

6               MR. BRADY:   I don't believe so.

7               JUDGE SAINSOT:   We can go.   Thank you all.

8               (Whereupon, the above-entitled matter  
9               was continued to May 5, 2005.)

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